

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to residential care facilities for children and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 105, “Juvenile Detention and Shelter Care Homes,” Chapter 112, “Licensing and Regulation of Child Foster Care Facilities,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and Chapter 116, “Licensing and Regulation of Residential Facilities for Children With an Intellectual Disability,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 234.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 234.6.

Purpose and Summary

These proposed amendments remove obsolete elements within the administrative rules, bring better alignment to current practice and implement changes required by federal law.

Fiscal Impact

This rule making makes a number of changes, most of which have no fiscal impact. However, federal law changes now require fingerprint checks for group care and shelter care staff. There are fiscal impacts associated with this new requirement.

Jobs Impact

The background checks included in these licensure or approval standards could prohibit employment of persons with criminal or abuse histories. The number of potential jobs that would result from implementation of these rule changes are unknown.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 17, 2019. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Administrator,” “Immediate family,” “Schedule II medications,” “Staff” and “Time out” in rule **441—105.1(232)**:

“*Administrator*,” when used for matters related to a certificate of approval or a certificate of license, means the administrator of the division of adult, children and family services.

“*Immediate family*,” for the purposes of this chapter, means persons who have a blood or legal relationship with the child.

“*Schedule II medications*” means those controlled substances identified in Iowa Code chapter 124.

“*Staff*” means any person providing care or services to or on behalf of the residents whether the person is an employee of the facility, an independent contractor or any other person who contracts with the facility, an employee of an independent contractor or any other person who contracts with the facility, or a volunteer.

“*Time out*” applies only to shelter care homes and means the temporary and short-term restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control. Staff physically preventing the resident from leaving the time out area would be considered seclusion in control room conditions.

ITEM 2. Amend rule **441—105.1(232)**, definitions of “Administer medication,” “Child care worker or house parent” and “Facility,” as follows:

“~~Administer medication~~ Medication management and administration” means to ~~remove properly~~ tend to prescription and nonprescription medications, including, but not limited to: properly obtaining and storing medication; removing medication from its storage place; to ensure ensuring to the extent possible that the child ingests, applies, or uses the appropriate dosage at the appropriate time of day; and to document documenting the dosage and the time and date that the child ingested, applied, or used the medication.

“~~Child care worker or house parent~~” shall mean an individual employed by a facility whose primary responsibility is the direct care of the children in the facility.

“*Facility*” shall mean a county or multicounty “juvenile detention home” or county or multicounty “juvenile shelter care home” as ~~those terms are~~ defined in Iowa Code section 232.2, and private juvenile detention and shelter care homes as defined in Iowa Code section 232.2 which do not meet the requirements of being “county or multicounty.”

ITEM 3. Rescind the definitions of “Controlled substances,” “Family shelter home” and “Prime programming time” in rule **441—105.1(232)**.

ITEM 4. Rescind subrule 105.2(12) and adopt the following **new** subrule in lieu thereof:

105.2(12) Private water supplies.

a. Maintenance and operation. Each privately operated water supply shall be maintained and operated in a manner that ensures safe drinking water. Each water supply used as part of a facility shall

be annually inspected and evaluated for deficiencies that may allow contaminants access to the well interior. Items such as open or loose well caps, missing or defective well vents, poor drainage around the wells, and the nearby storage of potential contaminants shall be evaluated. All deficiencies shall be corrected by a well contractor certified by the state within 30 days of discovery.

b. Evaluation and water testing. As part of the inspection and evaluation, water samples shall be collected and submitted by the local health sanitarian or a well contractor certified by the state to the state hygienic laboratory or other laboratory certified for drinking water analysis by the department of natural resources. The minimum yearly water analysis shall include coliform bacteria and nitrate (NO₃-) content. Total arsenic testing shall be performed once every three years. The water shall be deemed safe when there are no detectable coliform bacteria, when nitrate levels are less than 10 mg/L as nitrogen, and when total arsenic levels are 10 µg/L or less. A copy of the laboratory analysis report shall be provided to the department within 72 hours of receipt by the water supply.

c. Multiple wells supplying water. When the water supply obtains water from more than one well, each well connected to the water distribution system shall meet all of the requirements of these rules.

d. Deficiencies. When no apparent deficiencies exist with the well or its operations and the water supply is proven safe by meeting the minimum sampling and analysis requirements, water safety requirements have been met. Wells with deficiencies that result in unsafe water analysis require corrective actions through the use of a well contractor certified by the state.

e. When water is proven unsafe. When the water supply is proven unsafe by sampling and analysis, the facility shall immediately provide a known source of safe drinking water for all water users and hang notification at each point of water use disclosing the water is unsafe for drinking water uses. In addition, the facility shall provide a written statement to the department disclosing the unsafe result and detail a plan on how the water supply deficiencies will be corrected and the supply brought back into a safe and maintained condition. The statement shall be submitted to the department within ten days of the laboratory notice. All corrective work shall be performed and the water supply sampled and analyzed again within 45 days after any water test analysis report that indicates the water supply is unsafe for drinking water uses.

f. Water obtained from another source through hauling and storage must meet the requirements of the department of natural resources.

ITEM 5. Amend subrule 105.2(17) as follows:

105.2(17) *Emergency evacuation and safety procedures.* Upon admission, all children shall receive instruction regarding evacuation and safety procedures. All living units utilized by children shall have a posted plan for evacuation ~~in case of~~ and safety procedures regarding severe weather events, fire or disaster with practice other natural or man-made disasters. Practice fire drills shall be held at least every six months monthly, and severe weather drills shall be held twice annually.

ITEM 6. Amend subrule 105.3(2) as follows:

105.3(2) *Health of employees.* Each staff person who has direct client contact or is involved in food preparation shall be ~~medically determined to be free of serious infectious communicable diseases and able to perform assigned duties~~ tested for tuberculosis and have had a physical examination within six months prior to hiring. ~~A statement attesting to these facts shall be secured at the time of employment and filed in the personnel records of the staff person. A new statement shall be secured at least every three years. Physical examinations shall be completed at least every three years thereafter, or whenever circumstances require them more frequently. Evidence of these examinations or tests shall be included in each personnel file.~~ The statement shall be signed examinations or tests shall be completed by one of the following:

a. to *c.* No change.

ITEM 7. Rescind and reserve rule ~~441—105.4(232)~~.

ITEM 8. Amend rule ~~441—105.5(232)~~ as follows:

~~441—105.5(232)~~ Staff.

~~105.5(1) *Number of staff.*~~

a. *Generally.* A sufficient number of child care or house parent staff shall be on duty at all times so as to provide adequate coverage. The number of staff required will vary depending on the size and complexity of the program. All facilities shall have at least one staff person on duty. ~~Facilities having six or more residents shall have at least two staff persons on duty at all times that children are usually awake and present in the facility.~~ A minimum staff-to-child ratio of one child care worker to five children shall be maintained at all times children are awake and present in the facility and during supervised outings. Coed facilities having more than five residents should have both male and female staff on duty at all times. All child care or house parent staff shall be at least 18 years of age.

b. *On-call system.* ~~There shall be an on-call system for coed facilities to provide that staff of the same sex as the resident shall perform the following:~~ There shall be an on-call system operational 24 hours a day to provide supervisory consultation. There shall be a written plan documenting this system.

~~(1) All personal body searches.~~

~~(2) Supervision of personal care.~~

c. *Prime programming time.* ~~A minimum staff-child ratio of one child care worker or house parent to five children shall be maintained during prime programming times~~ Reserved.

d. *Night hours.* At night, there shall be a staff person awake in each living unit and making regular visual checks throughout the night. The visual checks shall be made at least every hour in shelter care and every half hour in detention. A log shall be kept of all checks, including the time of the check and any significant observations. ~~There shall be an on-call system which allows backup within minutes for both child care staff and casework personnel.~~

105.5(2) and 105.5(3) No change.

105.5(4) Organization and administration. Whenever there is a change in the name of the facility, the address of the facility, the executive, or the capacity, the information shall be reported to the ~~licensing manager~~ department. A table of organization including the identification of lines of responsibility and authority from policymaking to service to clients shall be available to the licensing staff. An executive director shall have full administrative responsibility for carrying out the policies, procedures and programs.

105.5(5) Record checks. Record checks are required for an entity being considered for a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside are required to determine whether any founded child abuse reports or criminal convictions exist related to the entity or whether the person has been placed on a sex offender registry. The facility shall not employ or use any staff person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ or use any staff person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of a certificate of approval or a certificate of license, volunteering or employment. For each person working in a shelter care home on a facility campus where children reside, fingerprints shall be provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check. Fingerprints shall be provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check. Fingerprinting, for the purpose of a national criminal history check, is required for any entity being considered for a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside.

a. and b. No change.

105.5(6) Record check procedure. Each entity being considered for a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside shall be checked for all of the following:

a. Records with the Iowa central abuse registry;

b. Records with the Iowa division of criminal investigation;

- c. Records with the Iowa sex offender registry;
- d. Records with the child abuse registry of any state where the person has lived during the past five years; and,
- e. Fingerprints provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check.

105.5(7) Evaluation of record. If the entity for whom background checks are required has a record of founded child or dependent adult abuse, a criminal conviction, or placement on a sex offender registry, the department shall complete an evaluation to determine that the abuse, criminal conviction, or placement on a sex offender registry does not warrant prohibition of a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside.

105.5(8) Evaluation form. The entity with the founded child or dependent adult abuse or criminal conviction report shall complete and return record check evaluation forms required by the department within ten calendar days of the date of receipt to be used to assist in the evaluation.

105.5(9) Evaluation decision. The department shall conduct the evaluation and issue a notice of decision in writing to the requesting entity.

ITEM 9. Amend paragraph **105.6(2)“c”** as follows:

- c. When the child is in the facility more than four days, the following information shall be made available to requested by the facility if not yet received.

(1) to (3) No change.

ITEM 10. Amend subrule 105.8(1) as follows:

105.8(1) Care Service plan. There shall be a written care service plan developed for each resident remaining in the facility over four days and completed according to the time frames identified for the contracted service. The care service plan will be based on individual needs determined through the assessment of each youth. The care service plan shall be developed in consultation with child care services, probation services, social services and educational, medical, psychiatric and psychological personnel as appropriate. The plan shall include:

- a. to e. No change.

ITEM 11. Amend paragraph **105.8(5)“b”** as follows:

b. The facility Shelter care homes shall plan and carry out efforts to establish and maintain workable relationships with the community recreational resources. The facility staff shall enlist the support of these resources to provide opportunities for children to participate in community recreational activities.

ITEM 12. Amend subrule 105.8(8) as follows:

105.8(8) Dietary program. The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food dietary and health needs and tastes of children. The facility shall follow all dietary recommendations prescribed by medical personnel or a dietitian licensed in the state of Iowa.

ITEM 13. Adopt the following **new** subrule 105.8(10):

105.8(10) Safety, protection, and well-being of children in care. Facilities shall develop and follow written policies and procedures that assure the safety, protection, and well-being of children in care. Policies shall address, but not be limited to, the following:

- a. Supportive leadership of the facility that promotes protecting each child from abuse or bullying from other children and staff.
- b. Defining the facility’s culture to reduce the use of unnecessary restraint.
- c. Clear definitions of unsafe behavior and the emergency situations when it is appropriate to use physical interventions.
- d. Staff training and development that give staff confidence that they are supported by leadership with proper supervision and ongoing access to information about best practices and evidence-based approaches to care.

- e. Adequate supervision of children while the children are using any hazardous or dangerous objects or equipment and when children are using the Internet or other social media.
- f. The social, cultural, and developmental needs of children in care.

ITEM 14. Adopt the following **new** subrule 105.8(11):

105.8(11) *Staff duties.* The staff duties shall include, but not be limited to, the following:

- a. Providing a supportive atmosphere for each child.
- b. Providing for coordination of internal and external activities of each child as needed.
- c. Providing leadership and guidance to each child as needed.
- d. Being responsible for overseeing and maintaining the general health and well-being of each child.
- e. Supervising all living activities.
- f. At all times, knowing where the children are and where they are supposed to be to assure ongoing safety.
- g. Providing for a liaison with the referring agency.
- h. Monitoring and recording behavior on a daily basis.

ITEM 15. Adopt the following **new** subrule 105.8(12):

105.8(12) *Volunteers.* A facility that utilizes volunteers to work directly with a particular child or group of children shall have a written plan for using volunteers. This plan shall be given to all volunteers. The plan shall indicate that all volunteers shall:

- a. Be directly supervised by a paid staff member.
- b. Be oriented and trained in the philosophy of the facility and the needs of children in care and methods of meeting those needs.
- c. Be subject to character, reference, and record check requirements as described in this chapter.

ITEM 16. Amend rule 441—105.9(232) as follows:

441—105.9(232) Medication management and administration. The facility shall have and follow written policies and procedures governing the methods of handling prescription drugs and over-the-counter drugs within the facility. No prescription or narcotic drugs are allowed in the facility without the authorization of a licensed physician or other prescriber authorized by law. Only drugs which have been approved by the federal Food and Drug Administration for use in the United States may be used. No experimental drugs may be used.

105.9(1) *Obtaining prescription medications.* Facilities shall permit prescription medications to be brought into the facility for a child.

a. Prescription medication in its original container, clearly labeled and prescribed for the child, may be accepted as legitimate prescription medication for the child. The label serves as verification that the medication was ordered by an authorized prescriber. Medication shall be prescribed by a provider authorized to prescribe the medication. Medication provided to residents shall be dispensed only from a licensed pharmacy in the state of Iowa in accordance with the pharmacy laws in the Iowa Code, from a licensed pharmacy in another state according to the laws of that state, or by a licensed physician.

b. No change.

105.9(2) No change.

105.9(3) *Storing medications.* Prescription and nonprescription medications shall be stored in a locked cabinet, a locked refrigerator, or a locked box within an unlocked refrigerator.

a. ~~Controlled substances~~ Schedule II medications shall be stored in a locked box within a locked cabinet. Nothing other than ~~controlled substances~~ Schedule II medications shall be stored in the locked box. ~~Controlled substances~~ Schedule II medications requiring refrigeration also shall be maintained within a double-locked container separate from food and other items.

b. The facility administrator shall determine distribution and maintenance of keys or other access to the medication storage cabinets and boxes.

c. A shelter facility administrator or the administrator's designee may preapprove shelter staff to carry prescription or nonprescription medications with them temporarily for use ~~while on day trips or at sites away from the facility.~~

105.9(4) Labeling medications. ~~Controlled substances~~ Schedule II medications and prescription medications shall be maintained in their original containers, clearly labeled by an authorized prescriber and prescribed for the child. Sample prescription medications shall be accompanied by a written prescription. Nonprescription medications shall be maintained as purchased in their original containers.

105.9(5) Administering ~~controlled~~ Schedule II medications. Only staff who have completed a medication ~~administration~~ management course shall be allowed to administer ~~controlled substances~~ Schedule II medications.

105.9(6) Administering prescription and nonprescription medications. The facility administrator shall determine and provide written authority as to which staff may administer prescription and nonprescription medications.

a. Prescription medications shall be administered only in accordance with the orders of the authorized prescriber. Nonprescription medications shall be administered by following the directions on the label.

b. The facility administrator or the administrator's designee may allow a child to self-administer prescription ~~and nonprescription~~ medication ~~in appropriate situations~~ with written authorization by the authorized prescriber. The facility shall have written policies relating to self-administration of prescription and nonprescription medication. The facility shall require documentation if the child self-administers a medication.

105.9(7) No change.

105.9(8) Medication for discharged residents. When a child is discharged or leaves the facility, the facility shall turn over to a responsible agent ~~controlled substances~~ Schedule II medications and prescription medications currently being administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

a. to c. No change.

105.9(9) Destroying outdated and unused medications. Unused ~~controlled~~ Schedule II medications and prescription medications ~~kept at the facility for more than six months~~ may not be kept at the facility for more than 15 days after the child has left the facility and the Schedule II medications and prescription medications shall be destroyed by the administrator or the administrator's designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

a. to d. No change.

ITEM 17. Amend paragraph **105.10(3)“f”** as follows:

f. A staff member shall always be ~~within hearing distance~~ positioned outside of the control room ~~and the child shall be visually checked by the staff at least every 15 minutes and each check shall be recorded.~~ Visual and auditory observations of the child's behavior and condition shall be recorded at five-minute intervals, and a complete written report shall be documented in the child's file by the end of the staff person's work shift.

ITEM 18. Amend rule 441—105.14(232) as follows:

441—105.14(232) Daily log. The facility shall maintain a daily log to generally record noteworthy occurrences regarding the children in care. ~~The log shall be used to note general progress in regard to the care plan and any problem areas or unusual behavior for each child.~~ Problem areas or unusual behavior for specific children shall be recorded in individual children's records.

ITEM 19. Amend subrule 105.16(1) as follows:

105.16(1) Generally. A facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Discipline shall not include withholding of basic necessities such as food, clothing, or sleep. Discipline shall not be used for anyone other than a child whose actions resulted in consequences. Group discipline shall not be

used because of actions of an individual child or other children. Agency staff shall be in control of and responsible for discipline at all times.

ITEM 20. Amend subrule 105.16(4) as follows:

105.16(4) *Room confinement—juvenile detention home only.* ~~Facilities shall provide sufficient programming and staff coverage to enable children to be involved in group activities during the day and evening hours. A child shall only be confined to the child's room for illness, at the child's own request, or for disciplinary reasons.~~ A juvenile detention home may confine a child to the child's room during normal sleeping hours or for disciplinary reasons if the facility has written policies and procedures which are approved by the department regarding this confinement that include, but are not limited to, the reasons for and time limitations of the confinement.

ITEM 21. Renumber subrule **105.16(5)** as **105.16(6)**.

ITEM 22. Adopt the following **new** subrule 105.16(5):

105.16(5) *Time out—juvenile shelter care home only.*

- a. A resident in time out must never be physically prevented from leaving the time out area.
- b. Time out may take place away from the area of activity or from other residents, such as in the resident's room, or in the area of activity of other residents.
- c. Staff must monitor the resident while the resident is in time out.

ITEM 23. Rescind paragraph **105.17(4)“b”** and adopt the following **new** paragraph in lieu thereof:

b. A summary related to discharge from the facility including:

- (1) The name, address, and relationship of the person or agency to whom the child was discharged.
- (2) The discharge summary (as included in the service plan).
- (3) Final disposition of a child's medications as applicable.
- (4) Identification of who transported the child and destination post discharge.

ITEM 24. Rescind rule 441—105.18(232) and adopt the following **new** rule in lieu thereof:

441—105.18(232) Discharge. Children in shelter care should be discharged to a permanent placement at the earliest possible time, preferably within 30 days. The facility shall collaborate with referral workers to assess each child's need for ongoing placement and the reasons for longer stays shall be documented in the child's case file. Children in detention shall be discharged as determined by the court.

ITEM 25. Amend rule 441—105.19(232), introductory paragraph, as follows:

441—105.19(232) Approval. The department will issue a Certificate of Approval, ~~Form 470-0620, or a certificate of license~~ annually without cost to any juvenile detention home or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

ITEM 26. Amend subrule 105.19(7) as follows:

105.19(7) *Certificate of approval or certificate of license.* Upon approval, ~~the home county or multicounty homes~~ will be issued a certificate of approval and private juvenile detention and shelter care homes will be issued a certificate of license containing the name of the home, address, capacity, and the date of expiration. Renewals will be shown by a seal bearing the new date of expiration, unless a change requires a new certificate to be issued.

ITEM 27. Rescind rule 441—105.20(232) and adopt the following **new** rule in lieu thereof:

441—105.20(232) Provisional approval.

105.20(1) *Required conditions.* The administrator may issue a provisional license for not more than one year when a facility does not meet the requirements of this chapter and the facility submits a written corrective action plan that is approved by the administrator to bring the facility into compliance with the applicable requirements.

105.20(2) Written report. The department or the department's designee will provide a report identifying the reasons for the provisional license and the standards that have not been met.

105.20(3) Corrective action. The director of the facility, chairperson of the county board of supervisors, or chairperson of the multicounty board of directors shall provide the department with a written plan of action that is approved by the department for correcting the deficiencies to bring the facility into compliance with the applicable requirements. The plan shall give specific dates by which the corrective action will be completed.

105.20(4) Completed corrective action. When the corrective action is completed on or before the date specified, a full approval shall be issued.

105.20(5) Uncompleted corrective action. When the corrective action is not completed by the date specified on a provisional approval, the department shall not grant a full approval and has the option of rejecting or extending the provisional approval. An extension of a provisional approval shall not cause the effective period of a provisional approval to exceed 18 months. If the corrective action plan is not completed within 18 months, the approval shall be rejected.

ITEM 28. Amend paragraph **105.21(1)“d”** as follows:

d. ~~Each~~ Except for mechanical restraint of a child by the staff of a juvenile detention facility for the amount of time needed while that child is being transported to a point outside the facility and as necessary when there is a serious risk of the child exiting a vehicle while the vehicle is in motion or otherwise absconding, each authorization of mechanical restraint shall not exceed one 1 hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

ITEM 29. Amend paragraph **105.21(1)“e”** as follows:

e. No child shall be kept in mechanical restraint for more than 1 hour in a 12-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician ~~or psychologist employed by a local mental health center.~~

ITEM 30. Amend paragraph **105.21(2)“c”** as follows:

c. Each facility authorized to use mechanical restraint shall submit a quarterly report, which shall include all the information required in paragraph 105.21(2)“*b*,” ~~to the bureau of adult, children and family services of the department which shall include all the information required in 105.21(2)“*b*.”~~ its licensing manager.

ITEM 31. Amend subrule 105.21(4) as follows:

105.21(4) In transporting children. ~~Notwithstanding 105.21(1)“*d*,” mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.~~

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts and comply with Iowa law while transporting children.

ITEM 32. Adopt the following new rule 441—105.23(232):

441—105.23(232) Mandatory reporting of child abuse and training.

105.23(1) Mandatory reporters. All defined in Iowa Code section 232.69 who, in the scope of professional practice or in their employment responsibilities, examine, attend, counsel, or treat a child and reasonably believe a child has suffered abuse, shall make a report in accordance with Iowa Code section 232.69 whenever the provider reasonably believes a child for whom the provider is providing foster care has suffered abuse.

105.23(2) Required training. Mandatory reporters shall receive training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69.

105.23(3) Training documentation. Each licensee shall develop and maintain a written record for each mandatory reporter in order to document the content and amount of training.

This rule is intended to implement Iowa Code section 232.69.

ITEM 33. Amend rule 441—112.1(237) as follows:

441—112.1(237) Applicability. This chapter relates to licensing procedures for all child foster care facilities authorized by Iowa Code chapter 237. Rules relating to specific types of facilities are located in 441—Chapter 113, “Licensing and Regulation of Foster Family Homes,” 441—Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for Children with an Intellectual Disability or Brain Injury.”

This rule is intended to implement Iowa Code chapter 237.

ITEM 34. Adopt the following **new** definition of “Administrator” in rule **441—112.2(237)**:

“*Administrator;*” when used for matters related to licensing, means the administrator of the division of adult, children and family services.

ITEM 35. Amend rule **441—112.2(237)**, definitions of “Applicant,” “Comprehensive residential facility,” “Director’s designee,” and “Residential facility for children with an intellectual disability” as follows:

“*Applicant:*”

1. No change.
2. For a proprietary ~~child-care~~ facility, the applicant is the owner or designee of the facility.
3. No change.

“*Comprehensive residential facility*” means a facility which provides care and treatment for children who are unable to live in a family situation due to social, emotional, or physical disabilities and who require varying degrees of supervision as indicated in the individual ~~treatment~~ service plan. Care includes room and board. Services include the internal capacity for individual, family, and group treatment. These services and others provided to the child shall be under the administrative control of the facility. Community resources may be used for medical, recreational, and educational needs. Comprehensive residential facilities have higher staff to client ratios than community residential facilities and may use control rooms, locked cottages, and mechanical restraints, ~~and chemical restraints~~ when these controls meet licensing requirements.

“*~~Director’s~~ Administrator’s designee:*”

1. For group facilities, the ~~director’s~~ administrator’s designee is the chief of the bureau of ~~protective child welfare~~ and community services.
2. For foster family homes, the designee is the department of human services’ service area manager.

“*Residential facility for children with an intellectual disability or brain injury*” means any residential facility which serves children with an intellectual disability as defined in Iowa Code chapter 222 or children with brain injury as defined in Iowa Code chapter 225C.

ITEM 36. Amend paragraph **112.3(1)“b”** as follows:

b. *Group care.* A person wishing to apply for a group care license ~~shall~~ may contact the department:

(1) ~~Through the “Child Welfare” link~~ Using the “Contact Us” link found on the department’s Web Internet site, www.dhs.iowa.gov at dhs.iowa.gov; or

(2) By mail to the ~~DHS~~ Iowa Department of Human Services, Division of ~~Child Adult, Children and~~ Family Services, Attn: Group Care Licensing, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

ITEM 37. Amend subrule 112.4(6) as follows:

112.4(6) A foster family home license shall be approved for a term of one year for the first and second years of licensure. Thereafter, the license shall be approved for a term of two years unless it is

determined by the administrator that a one-year license shall be issued. A group facility license shall be approved for a term of one to three years according to the following criteria:

a. A one-year license may be approved for all new ~~agencies~~ facilities that meet licensure standards.
b. A ~~two-year one- to two-year~~ license may be approved ~~upon completion of a survey for a renewal license~~ when it is determined:

(1) Some health or safety concerns have been identified, ~~but they are determined to be minor or easily corrected; or~~

(2) Some complaints against a facility have been substantiated, ~~but they are determined to be minor; and or~~

(3) Deficiencies that have been identified ~~are determined to be minor or easily corrected.~~

c. A three-year license may be approved ~~upon completion of a survey for a renewal license~~ when:

(1) to (3) No change.

ITEM 38. Amend paragraph **112.5(1)“a”** as follows:

a. The minimum standards set forth in these rules are not met and a provisional license is inappropriate or disapproved by the ~~director’s~~ administrator or administrator’s designee.

ITEM 39. Amend subrule 112.7(1) as follows:

112.7(1) ~~Statement of reasons~~ Time frame for provisional licenses. ~~Provisional licenses shall be accompanied by a statement of the reasons for the provisional license, the standards that have not been met, the date that the facility must make required changes to meet standards. The administrator may issue a provisional license for not more than one year when a licensee’s facility does not meet the requirements of this chapter and the licensee submits a written corrective action plan that is approved by the administrator to bring the facility into compliance with the applicable requirements.~~

ITEM 40. Amend subrule 112.7(2) as follows:

112.7(2) ~~Corrective action~~ Written report. ~~The facility shall furnish the licensing agency with a plan of action to correct deficiencies listed that resulted in the provisional license. The plan shall give specific dates upon which the corrective action will be completed. The administrator or the administrator’s designee will provide a report identifying the reasons for the provisional license and the standards that have not been met.~~

ITEM 41. Adopt the following **new** subrule 112.7(3):

112.7(3) Corrective action plan. The facility shall furnish the licensing agency with a plan of action to correct deficiencies listed that resulted in the provisional license. The plan shall give specific dates upon which the corrective action will be completed.

ITEM 42. Amend subrule 112.9(2) as follows:

112.9(2) Requirements for emergency suspension. The emergency suspension of a license by the ~~director~~ administrator or administrator’s designee shall occur only when all of the following conditions exist:

a. to d. No change.

ITEM 43. Amend subrule 112.9(3) as follows:

112.9(3) Requirements for time-limited suspensions. The time-limited suspension of a license by the ~~director~~ administrator or administrator’s designee shall occur only when all of the following conditions exist:

a. to f. No change.

ITEM 44. Amend rule 441—112.10(232) as follows:

441—112.10(232) Mandatory reporting of child abuse and training.

112.10(1) Mandatory reporters. ~~The following foster care providers~~ All defined in Iowa Code section 232.69 who, in the scope of professional practice or in their employment responsibilities, examine, attend, counsel, or treat a child and reasonably believe a child has suffered abuse, shall make a report; in accordance with Iowa Code section 232.69, whenever they the provider reasonably believe believes a child for whom they are the provider is providing foster care has suffered abuse.

~~a.—Any social worker who is employed by a licensed child foster care facility and who works with foster children.~~

~~b.—Any licensed foster parent providing child foster care.~~

112.10(2) Required training. After completing the initial mandatory reporter training, and every five years thereafter, any person required to make a report under subrule 112.10(1) shall complete two hours of training relating to the identification and reporting of child abuse. Mandatory reporters shall receive training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69.

112.10(3) Training provider.

~~a.—If the foster care provider is a social worker employed by a licensed child foster care facility, the employer shall be responsible for providing the required training in child abuse identification and reporting.~~

~~b.—If the foster care provider is a licensed foster parent, the foster parent shall be responsible for obtaining the required two-hour training in child abuse identification and reporting as part of a continuing education program required under Iowa Code section 232.69 and chapter 272C and approved by the department of public health.~~

112.10(4) Training content.

~~a.—Training in child abuse identification shall include physical and behavioral signs of physical abuse, denial of critical care, sexual abuse and other categories of child abuse pursuant to Iowa Code section 232.68.~~

~~b.—Training in child abuse reporting shall include reporting requirements and procedures.~~

112.10(5) 112.10(3) Training documentation. Each licensee shall develop and maintain a written record for each mandatory reporter in order to document the content and amount of training.

~~a.—If the foster care provider is a social worker employed by a licensed child foster care facility, the employer shall document in the employee's personnel record the content and amount of training.~~

~~b.—If the foster care provider is a licensed foster parent, the foster parent shall be responsible for securing documentation of the training content, amount, and provider, and shall forward the documentation to the department's recruitment and retention contractor, which will provide a copy to the department licensing worker for the service area where the family resides for inclusion in the licensing file.~~

This rule is intended to implement Iowa Code section 232.69.

ITEM 45. Adopt the following new rule 441—112.12:

441—112.12(237) Record checks. Record checks as defined in 441—Chapter 114 are required for any entity being considered for licensure or employment by a licensee on a facility campus where children reside to determine whether any applicant has any founded child abuse reports or criminal convictions or has been placed on a sex offender registry.

ITEM 46. Adopt the following new definitions of “Immediate family,” “Schedule II medications” and “Time out” in rule **441—114.2(237)**:

“*Immediate family*,” for the purposes of this chapter, means persons who have a blood or legal relationship with the child.

“*Schedule II medications*” means those controlled substances identified in Iowa Code chapter 124.

“*Time out*” means the temporary and short-term restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control. Staff physically preventing the resident from leaving the time out area would be considered seclusion in control room conditions.

ITEM 47. Amend rule **441—114.2(237)**, definition of “Staff,” as follows:

“*Staff*” means any person providing care or services to or on behalf of the facility residents whether the person is an employee of the facility, an independent contractor or any other person who contracts with the facility, an employee of an independent contractor or any other person who contracts with the facility, or a volunteer.

ITEM 48. Rescind the definitions of “Highly structured juvenile program,” “Locked cottage,” and “Prime programming time” in rule **441—114.2(237)**.

ITEM 49. Amend subrule 114.4(1) as follows:

114.4(1) Bathroom facilities.

- a. No change.
- b. Each bathroom shall be properly equipped with toilet tissue in dispensers, towels, soap, and other items required for personal hygiene unless children are individually given these items. ~~Paper towels, when used, and toilet tissue shall be in dispensers.~~
- c. to e. No change.
- f. At least one toilet and one lavatory wash basin shall be provided for each six children or portion thereof.
- g. to k. No change.

ITEM 50. Rescind subrule 114.4(8) and adopt the following new subrule in lieu thereof:

114.4(8) Private water supplies. Any facility that serves at least 25 people for at least 60 days during the year and is supplied by its own well meets the definition of a public water supply and must be regulated by the department of natural resources.

a. Maintenance and operation. Each privately operated water supply shall be maintained and operated in a manner that ensures safe drinking water. Each water supply used as part of a facility shall be annually inspected and evaluated for deficiencies that may allow contaminants access to the well interior. Items such as open or loose well caps, missing or defective well vents, poor drainage around the wells, and the nearby storage of potential contaminants shall be evaluated. All deficiencies shall be corrected within 30 days of discovery by a well contractor certified by the state.

b. Evaluation and water testing. As part of the inspection and evaluation, water samples shall be collected and submitted by the local health sanitarian or a well contractor certified by the state to the state hygienic laboratory or other laboratory certified for drinking water analysis by the department of natural resources. The minimum yearly water analysis shall include coliform bacteria and nitrate (NO₃-) content. Total arsenic testing shall be performed once every three years. The water shall be deemed safe when there are no detectible coliform bacteria, when nitrate levels are less than 10 mg/L as nitrogen, and when total arsenic levels are 10 µg/L or less. A copy of the laboratory analysis report shall be provided to the department within 72 hours of receipt by the water supply.

c. Multiple wells supplying water. When the water supply obtains water from more than one well, each well connected to the water distribution system shall meet all of the requirements of these rules.

d. Deficiencies. When no apparent deficiencies exist with the well or its operations and the water supply is proven safe by meeting the minimum sampling and analysis requirements, water safety requirements have been met. Wells with deficiencies that result in unsafe water analysis require corrective actions through the use of a well contractor certified by the state.

e. When water is proven unsafe. When the water supply is proven unsafe by sampling and analysis, the facility shall immediately provide a known source of safe drinking water for all water users and hang notification at each point of water use disclosing the water is unsafe for drinking water uses. In addition, the facility shall provide a written statement to the department disclosing the unsafe result and detail a plan on how the water supply deficiencies will be corrected and the supply brought back into a safe and maintained condition. The statement shall be submitted to the department within ten days of the laboratory notice. All corrective work shall be performed and the water supply sampled and analyzed again within 45 days from any water test analysis report that indicates the water supply is unsafe for drinking water uses.

f. Water obtained from another source through hauling and storage must meet the requirements of the department of natural resources.

ITEM 51. Amend subrule 114.5(1) as follows:

114.5(1) General. ~~a.~~ Facilities shall take sufficient measures to ensure the safety of the children in care in all of its programs.

~~b. Stairways, halls and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.~~

~~c. Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.~~

~~d. Fuse boxes shall be inaccessible to children.~~

~~e. Facilities shall have written procedures for the handling and storage of hazardous materials.~~

~~f. Firearms and ammunition shall be kept under lock and key and inaccessible to children. When firearms are used, the facility shall have written policies regarding their purpose, use, and storage.~~

~~g. All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.~~

~~h. The facility shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the institution grounds and accessible to the children.~~

ITEM 52. Renumber subrules **114.5(2)** to **114.5(4)** as **114.5(3)** to **114.5(5)**.

ITEM 53. Adopt the following new subrule 114.5(2):

114.5(2) Premises.

a. Stairways, halls and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

b. Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

c. Fuse boxes and circuit breakers shall be inaccessible to children.

d. Facilities shall have written procedures for the handling and storage of hazardous materials.

e. Firearms and ammunition shall be kept under lock and key and inaccessible to children. When firearms are used, the facility shall have written policies regarding their purpose, use, and storage.

f. All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

g. The facility shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the facility grounds and accessible to the children.

ITEM 54. Amend renumbered subrule 114.5(3) as follows:

114.5(3) Emergency evacuation and safety procedures. Upon admission all children shall receive instruction regarding evacuation and safety procedures. All living units utilized by children shall have a posted plan for evacuation in case of and safety procedures regarding severe weather events, fire or disaster with practice other natural or man-made disasters. Practice fire drills shall be held at least every six months monthly and severe weather drills shall be held twice annually.

ITEM 55. Adopt the following new subrule 114.5(6):

114.5(6) Safety, protection, and well-being of children in care. Facilities shall develop and follow written policies and procedures that assure the safety, protection, and well-being of children in care. Policies shall address, but not be limited to, the following:

a. Supportive leadership of the facility that promotes protecting each child from abuse or bullying from other children and staff.

b. Defining the facility's culture to reduce the use of unnecessary restraint.

c. Clear definitions of unsafe behavior and the emergency situations when it is appropriate to use physical interventions.

d. Staff training and development that give staff confidence they are supported by leadership with proper supervision and ongoing access to information about best practices and evidence-based approaches to care.

e. Adequate supervision of children while the children are using any hazardous or dangerous objects or equipment and when children are using the Internet or other social media.

f. The social, cultural, and developmental needs of children in care.
This rule is intended to implement Iowa Code section 237.3.

ITEM 56. Amend rule 441—114.6(237) as follows:

441—114.6(237) Organization and administration. Any change in the name of the facility, the address of the facility, the executive, or the capacity shall be reported to the licensing manager department.

114.6(1) No change.

114.6(2) Purpose of agency or facility. The purpose or function of the organization shall be clearly defined in writing and shall include a description of the children to be accepted for care and the services offered.

114.6(3) No change.

114.6(4) Executive director. The governing body or proprietor or partner(s) shall select and appoint an executive director with full administrative responsibility and qualifications for carrying out the policies, procedures and programs established by the governing body.

114.6(5) No change.

This rule is intended to implement Iowa Code section 237.2.

ITEM 57. Amend subrule 114.7(2) as follows:

114.7(2) Health of staff. Each staff person who has direct client contact or is involved in food preparation shall be medically determined to ~~be free of serious infectious communicable diseases and able to perform assigned duties~~ be tested for tuberculosis and have a physical examination within six months prior to hiring. Physical examinations shall be completed every three years thereafter. A statement attesting to these facts shall be secured at the time of employment and filed in the staff record of the staff person. A new statement shall be secured at least every three years. Evidence of these examinations or tests shall be included in each personnel file. The statement shall be signed examinations or tests shall be completed by one of the following:

a. to c. No change.

ITEM 58. Amend paragraph **114.7(3)“a”** as follows:

a. The facility shall maintain the following information with respect to each staff person:

(1) and (2) No change.

(3) ~~Documentation that a criminal records check with the Iowa division of criminal investigation has been completed on the staff person prior to providing any care or service directly or indirectly to children under the care of the agency. A copy of the department’s evaluation of the criminal record check shall be kept in the staff record~~ of all record checks and evaluations as required in subrule 114.8.

(4) No change.

(5) ~~Documentation that a check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child abuse prior to the person’s providing any care or services directly or indirectly to children under the care of the agency. A copy of the department’s evaluation of this child abuse record check shall be kept in the staff record~~ Reserved.

(6) Records of a health physical examination or a record of a health report, as required in subrule 114.7(2), plus a written record of subsequent health services rendered to staff necessary to ensure that each individual is physically able to perform the job duties or functions.

(7) ~~If the staff person has completed and submitted Form 470-2310, Record Check Evaluation, to the agency, a copy shall be kept in the staff record~~ Reserved.

(8) and (9) No change.

ITEM 59. Amend paragraph **114.8(2)“d”** as follows:

d. The number and qualifications of the staff will vary depending on the needs of the children. There shall be at least a one to eight staff to client ratio during prime programming time ~~all times children~~ are awake and present in the facility and during supervised outings.

ITEM 60. Amend subrule 114.8(3) as follows:

114.8(3) Staff duties.

- a. No change.
- b. Caseworkers shall:
 - (1) Develop a ~~care~~ service plan for each child containing goals and objectives with projected dates of accomplishment and shall involve the client, referral agency, and family whenever possible.
 - (2) No change.
 - c. The facility staff shall ~~define in writing who shall~~ be responsible for the following ~~staff duties~~:
 - (1) Documenting case reassessments quarterly, involving the same personnel as previously involved in ~~care~~ service plan development.
 - (2) Documenting the implementation of the ~~care~~ service plan.
 - (3) to (11) No change.
 - (12) At all times, knowing where the children are and where they are supposed to be to assure ongoing safety.

ITEM 61. Amend subparagraph **114.8(4)“c”(5)** as follows:

(5) Access to current ~~literature, including books, monographs, and journals~~ information and evidence based practices relevant to the facility’s services.

ITEM 62. Adopt the following new subrule 114.8(5):

114.8(5) *Volunteers.* A facility that utilizes volunteers to work directly with a particular child or group of children shall have a written plan for using volunteers. This plan shall be given to all volunteers. The plan shall indicate that all volunteers shall:

- a. Be directly supervised by a paid staff member.
- b. Be oriented and trained in the philosophy of the facility and the needs of children in care, and methods of meeting those needs.
- c. Be subject to character, reference, and record check requirements described in Iowa Administrative Code 441—Chapter 112 and in this chapter.

ITEM 63. Amend subrule 114.9(3) as follows:

114.9(3) *Referral requirements information.* The following information shall be ~~available~~ requested from the referral worker prior to any decision being made regarding the acceptance of a child:

- a. to g. No change.

ITEM 64. Amend subrule 114.9(5) as follows:

114.9(5) *Personal assessment.* At the time of intake, individual needs will be identified by staff based on written and verbal information from referral sources, observable behavior at intake and the initial interview with youth or family, school contacts, physical examinations, and other relevant material. The individual assessment shall provide the basis for development of a ~~care~~ service plan for each child.

ITEM 65. Amend subrule 114.10(2) as follows:

114.10(2) *Care Service plan.* There shall be a written ~~care~~ service plan for each child. The ~~care~~ service plan shall be based on the individual needs determined through the assessment of each resident, provide for consultation with the family, and shall include the following:

- a. No change.
- b. Description of planned services including measurable goals and objectives which indicate which staff person will be responsible for the specific services in the plan.
- c. No change.
- d. A discharge summary.

ITEM 66. Rescind subrule 114.10(4) and adopt the following new subrule in lieu thereof:

114.10(4) *Daily log.* The facility shall maintain a daily log to generally record noteworthy occurrences regarding the children in care. Problem areas or unusual behavior for specific children shall be recorded in individual children’s records.

ITEM 67. Amend paragraph **114.10(6)“d”** as follows:

d. A facility shall have and staff shall follow written procedures ~~for staff members to follow~~ in case of medical emergency.

ITEM 68. Amend subrule 114.10(7) as follows:

114.10(7) Dietary program. The facility shall provide properly planned, nutritious and inviting food and take into consideration the ~~special food~~ dietary and health needs ~~and tastes~~ of children. The facility shall follow all dietary recommendations prescribed by medical personnel or a dietitian licensed in the state of Iowa.

ITEM 69. Rescind subrule 114.10(8) and adopt the following **new** subrule in lieu thereof:

114.10(8) Recreation and leisure programs.

a. The facility shall provide adequately designed and maintained indoor and outdoor activity areas, equipment, and equipment storage facilities appropriate for the residents it serves. There shall be a variety of activity areas and equipment so that all children can be active participants in different types of individual and group sports and other motor activities.

b. Games, toys, equipment, and arts and crafts material shall be selected according to the ages and number of children with consideration to the needs of the children to engage in active and quiet play.

c. The facility shall plan and carry out efforts to establish and maintain workable relationships with community recreational resources so these resources may provide opportunities for children to participate in community recreational activities.

ITEM 70. Amend subrule 114.10(9) as follows:

114.10(9) Casework services. A facility shall provide or obtain casework services in the form of counseling in accordance with the needs of each child's individual ~~care~~ service plan. Casework services include crisis intervention, daily living skills, interpersonal relationships, future planning and preparation for placement as required by the child.

ITEM 71. Rescind and reserve subrule **114.10(11)**.

ITEM 72. Amend paragraph **114.11(2)“g”** as follows:

g. Telephone number and address of the agency or court making the referral and contact information of the child's attorney or guardian ad litem.

ITEM 73. Amend subrule 114.11(9) as follows:

114.11(9) Care Service plan. Individual child ~~care~~ service plan, ~~and semiannual review~~ quarterly update, and revision ~~revisions~~ of care the service plan. The service plan shall be updated quarterly or any time upon receipt of a new case permanency plan or juvenile court services plan or as otherwise needed to address the changing needs of the child. Discharge summary completing the service plan information shall be completed upon a child's discharge from placement.

ITEM 74. Amend subrule 114.11(10) as follows:

114.11(10) Dictation Documentation. The following information shall be documented in each child's record.

a. No change.

b. ~~Information on release of the child from the facility including the name, address and relationship of the person or agency to whom the child was released.~~ A summary related to discharge including:

(1) The name, address and relationship of the person or agency to whom the child was released.

(2) The discharge summary (as included in the service plan).

(3) Final disposition of a child's medications as applicable.

(4) Identification of who transported the child and destination post discharge.

ITEM 75. Adopt the following **new** subrule 114.11(11):

114.11(11) Electronic records. An authorized representative of the department shall be provided unrestricted access to electronic records pertaining to the care provided to the residents of the facility.

a. If access to an electronic record is requested by the authorized representative of the department, the facility may provide a tutorial on how to use its particular electronic system or may designate an

individual who will, when requested, access the system, respond to any questions or assist the authorized representative as needed in accessing electronic information in a timely fashion.

b. The facility shall provide a terminal where the authorized representative may access records.

c. If the facility is unable to provide direct print capability to the authorized representative, the facility shall make available a printout of any record or part of a record on request in a time frame that does not intentionally prevent or interfere with the department's survey or investigation.

ITEM 76. Amend rule 441—114.12(237), introductory paragraph, as follows:

441—114.12(237) Drug utilization and control. The agency shall have and follow written policies and procedures governing the methods of handling prescription drugs and over-the-counter drugs within the facility. No prescription or narcotic drugs are to be allowed in the facility without the authorization of a licensed physician or authorized prescriber.

ITEM 77. Amend subrule 114.12(2) as follows:

114.12(2) Prescribed by physician or other authorized prescriber. Drugs shall be prescribed by a physician licensed to practice in the state of Iowa or the state in which the physician is currently practicing, or by an advanced registered nurse practitioner or physician assistant as permitted by Iowa law, and may be prescribed only for use in accordance with dosage ranges and indications approved by the federal Food and Drug Administration.

ITEM 78. Amend subrule 114.12(4) as follows:

114.12(4) Locked cabinet. All drugs shall be maintained in a locked cabinet. ~~Controlled substances~~ Schedule II medications shall be maintained in a locked box within the locked cabinet. The cabinet key shall be in the possession of a staff person. A bathroom shall not be used for drug storage. A documented exception can be made by ~~a physician for persons identified in these rules who may allow~~ self-administered drugs as discussed in subrule 114.12(17).

ITEM 79. Amend subrule 114.12(9) as follows:

114.12(9) Medication for discharged residents. When a resident is discharged or leaves the facility, ~~medications currently being administered shall be sent, in the original container, with the resident or with a responsible agent, and with the approval of the physician~~ the facility shall turn over to a responsible agent Schedule II medications and prescription medications currently being administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

a. The name, strength, dosage form, and quantity of each medication.

b. The signature of the facility staff person who turned over the medications to the responsible agent.

c. The signature of the responsible agent receiving the medications.

ITEM 80. Rescind subrule 114.12(10) and adopt the following **new** subrule in lieu thereof:

114.12(10) Unused prescription drugs. Unused prescription drugs prescribed for residents may not be kept at the facility for more 15 days after the resident has left the facility. The unused prescription drugs shall be destroyed by the facility executive director or the executive director's designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

a. The resident's name.

b. The name, strength, dosage form, and quantity of each medication.

c. The date the medication was destroyed.

d. The names and signatures of the witness and staff person who destroyed the medication.

ITEM 81. Amend subrule 114.12(11) as follows:

114.12(11) Refills. Prescriptions shall be refilled only with the permission of the ~~attending physician~~ prescriber authorized under Iowa law.

ITEM 82. Amend subrule 114.12(13) as follows:

114.12(13) Order of ~~physician~~ authorized prescriber. No prescription medication may be administered to a resident without the order of ~~a licensed physician~~ an authorized prescriber.

ITEM 83. Amend subrule 114.12(14) as follows:

114.12(14) Patient reaction. Any unusual patient reaction to a drug shall be reported to the attending physician or prescriber immediately.

ITEM 84. Amend subrule 114.12(16) as follows:

114.12(16) Administration of drugs. Medications shall be administered only in accordance with the instructions of the attending physician or authorized prescriber. ~~Controlled substances~~ Medications shall be administered only by ~~qualified personnel~~ staff who have completed a medication management course. The type and amount of the medication, the time and date, and the staff member administering the medication shall be documented in the child's record. (See IAC 620—8.16(204).)

ITEM 85. Amend subrule 114.12(17) as follows:

114.12(17) Self-administration of drugs. There shall be written policy and procedures relative to self-administration of prescription medications by residents and only when:

- a. Medications are prescribed by a physician or other authorized prescriber.
- b. The physician ~~agrees~~ or authorized prescriber provides written approval that the patient is capable of participating and can self-administer the drug.
- c. No change.

ITEM 86. Adopt the following new subrule 114.12(18):

114.12(18) Obtaining nonprescription medications. Facilities shall maintain a supply of standard nonprescription medications for use for children residing at the facility. Examples of standard nonprescription medications include cough drops and cough syrups, aspirin substitutes and other pain control medication, poison antidote, and diarrhea control medication.

- a. All nonprescription medications kept on the premises for the use of residents shall be preapproved annually by a licensed pharmacist or an authorized prescriber.
- b. Facilities shall maintain a list of all preapproved nonprescription medications. The list shall indicate standard uses, standard dosages, contraindications, side effects, and common drug interaction warnings. The facility administrator or the administrator's designee shall be responsible for determining the scope of the list and brands and types of medications included.
- c. Only nonprescription medications on the preapproved list shall be available for use. However, the facility administrator or the administrator's designee, in consultation with an authorized prescriber or licensed pharmacist, may approve use of a nonprescription medication that is not on the preapproved list for a specific child.

ITEM 87. Amend paragraph **114.13(3)“f”** as follows:

f. The child shall be allowed to send and receive mail unopened unless contraindicated. Contraindications, except those listed below, should be documented in the child's file. The facility may require the child to open incoming mail in the presence of a staff member when it is suspected to contain contraband articles, or when there is money that should be receipted and deposited.

ITEM 88. Amend subrule 114.20(1) as follows:

114.20(1) Generally. The facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Agency staff shall be in control of and responsible for discipline at all times. Discipline shall not include the withholding of basic necessities such as food, clothing, or sleep. Discipline shall not be used for anyone other than a child whose actions resulted in consequences. Group discipline shall not be used because of actions of an individual child or other children.

ITEM 89. Amend subrule 114.20(3) as follows:

114.20(3) Physical restraint. The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. Physical restraint must be conducted with the child in

a standing position whenever possible. Each child has the right to be free from restraint and seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

a. to c. No change.

d. The rationale and authorization for the use of physical restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be clearly ~~set forth~~ documented in the child's record by the responsible staff persons no later than the end of the shift in which the restraint was used.

e. Documentation of restraint use shall include, but need not be limited to, the following:

- (1) Each use of restraint or control room.
- (2) The time the intervention began and ended.
- (3) The reason that required the resident to be restrained or put in a control room.
- (4) The name of staff involved in the intervention.

ITEM 90. Amend subrule 114.20(4) as follows:

114.20(4) *Other restraints and control room.* Only comprehensive residential facilities may use a control room, locked cottages, or mechanical restraints ~~or chemical restraint.~~

ITEM 91. Adopt the following new subrule 114.20(6):

114.20(6) *Time out.*

- a.* A resident in time out must never be physically prevented from leaving the time out area.
- b.* Time out may take place away from the area of activity or from other residents, such as in the resident's room, or in the area of activity of other residents.
- c.* Staff must monitor the resident while the resident is in time out.

ITEM 92. Amend rule 441—114.21(237) as follows:

441—114.21(237) *Illness, accident, death, or unauthorized absence from the facility.*

114.21(1) *Notification of illness.* A facility shall notify the child's parent(s), guardian and responsible agency of any serious illness, incident involving serious bodily injury, ~~or~~ circumstances causing removal of the child from the facility, or elopement.

114.21(2) No change.

This rule is intended to implement Iowa Code section 237.2.

ITEM 93. Amend rule 441—114.22(237) as follows:

441—114.22(237) *Records.* In the event of closure of a facility, children's records shall be sent to the department of human services for retention according to the department's records retention policy or the period defined in the department's contract for services, whichever is longer.

This rule is intended to implement Iowa Code section 237.2.

ITEM 94. Rescind rule 441—114.23(237) and adopt the following new rule in lieu thereof:

441—114.23(237) *Unannounced visits.*

114.23(1) *Frequency.*

a. Time. At least one annual unannounced visit shall occur during periods of the day when the child would normally be in the facility and awake.

b. Activities. The visit shall include an assessment of, but not be limited to, the following areas:

- (1) Interaction between the staff and child.
- (2) Interaction between the children.
- (3) Discussion with the child about experiences in the facility.
- (4) A check on any previously cited deficiencies.
- (5) Overall impression of the facility.
- (6) Staff record checks.

c. Recommendation. The licensing staff shall recommend follow-up when needed.

114.23(2) Visits at other times may occur as a result of a self-reported incident or specific complaint.

ITEM 95. Renumber rule **441—114.24(237)** as **441—114.25(237)**.

ITEM 96. Adopt the following new rule 441—114.24(237):

441—114.24(237) Record check information. Record checks are required for any entity being considered for licensure or employment by a licensee on a facility campus where children reside to determine whether any founded child abuse reports or criminal convictions exist or whether the entity has been placed on a sex offender registry. The facility shall not employ any person who has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ any person who has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of licensure, volunteering or employment.

114.24(1) Procedure. Each entity being considered for licensure or employment shall be checked for all of the following:

- a.* Records with the Iowa central abuse registry, using the request for child and dependent adult abuse information form;
- b.* Records with the Iowa division of criminal investigation, using the department's criminal history record check form;
- c.* Records with the Iowa sex offender registry;
- d.* Records with the child abuse registry of any state where the person has lived during the past five years; and,
- e.* Fingerprints provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check. Fingerprinting, for the purpose of a national criminal history check, is required for all entities considered for licensure or employment by a licensee on a facility campus where children reside.

114.24(2) Evaluation of record. If an entity for which a background check is required has a record of founded child or dependent adult abuse, a criminal conviction, or placement on a sex offender registry, the department shall prohibit licensure or employment unless an evaluation determines that the abuse, criminal conviction, or placement on a sex offender registry does not warrant prohibition.

a. Scope. The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or criminal conviction report in relation to:

- (1) The position sought or held,
- (2) The time elapsed since the abuse or crime was committed,
- (3) The degree of rehabilitation,
- (4) The likelihood that the person will commit the abuse or crime again, and
- (5) The number of abuses or crimes committed by the person.

b. Evaluation form. The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return the department's record check evaluation form within ten calendar days of the date of receipt to be used to assist in the evaluation.

114.24(3) Evaluation decision. The department shall conduct the evaluation and make the decision of whether or not the founded child or dependent adult abuse or criminal conviction warrants prohibition of licensure or employment by a licensee. The department shall issue a notice of decision in writing to the requesting entity. The requesting entity is responsible for providing a copy of the notice to the prospective employee. Record check evaluations are valid for 30 days from the date the notice of decision is issued.

ITEM 97. Adopt the following new definition of "Locked cottage" in rule **441—115.2(237)**:

"*Locked cottage*" means an occupied comprehensive residential facility or an occupied unit of a comprehensive residential facility which is physically restrictive because of the continual locking of doors to prevent the children in care from leaving the facility.

ITEM 98. Amend rule ~~441—115.2(237)~~, definitions of “Comprehensive residential facility” and “Secure facility,” as follows:

“*Comprehensive residential facility*” means a facility which provides care and treatment for children who are unable to live in a family situation due to social, emotional, or physical disabilities and who require varying degrees of supervision as indicated in the individual ~~treatment~~ service plan. Care includes room and board. Services include the internal capacity for individual, family, and group treatment. These services and others provided to the child shall be under the administrative control of the facility. Community resources may be used for medical, recreational, and educational needs. Comprehensive residential facilities have higher staff to client ratios than community residential facilities and may use control rooms, locked cottages, and mechanical restraints, ~~and chemical restraints~~ when these controls meet licensing requirements.

“*Secure facility*” means any comprehensive residential facility which employs, on a regular basis, locked doors or other ~~physical means~~ building characteristics intended to prevent children in care from leaving the facility without authorization. Secure facilities may only be used for children who have been adjudicated delinquent or placed pursuant to provisions of Iowa Code chapter 229.

ITEM 99. Amend subparagraph ~~115.4(2)~~“b”(1) as follows:

(1) Provide at least weekly group or individually scheduled in-person conferences with each resident for whom the caseworker is responsible. More frequent in-person contact shall be provided if required in the ~~care~~ service plan.

ITEM 100. Rescind rule ~~441—115.5(237)~~ and adopt the following new rule in lieu thereof:

~~441—115.5(237)~~ Casework services. The facility shall have the internal capacity to provide individual, family and group counseling and shall provide, but not be limited to, casework dealing with crisis intervention, daily living skills, peer relationships, future planning and preparation for discharge.

ITEM 101. Amend subrule 115.6(4) as follows:

115.6(4) Use of restraint.

a. and b. No change.

c. A secure facility which uses ~~any form of~~ restraint permitted by licensing standards, other than physical restraint, shall ensure that all direct service staff are adequately trained in the following areas:

(1) The appropriate use and application or administration of each ~~approved~~ permitted form of restraint.

(2) and (3) No change.

d. A secure facility shall continually review any ~~placement of~~ use of a restraint on a child, ~~in any form of restraint~~ other than physical restraint. The facility shall release the child from restraint immediately when the situation precipitating restraint no longer exists.

ITEM 102. Amend subrule 115.7(2) as follows:

115.7(2) Written policies. When a comprehensive residential ~~treatment~~ facility uses a control room as part of its treatment program, the facility shall have written policies regarding its use. The policy shall:

a. to c. No change.

d. Limit the utilization of the control room to one of the following two circumstances:

(1) The child’s ~~care~~ service plan includes and explains how this use of the control room fits into the ~~treatment~~ service plan for the child.

(2) A ~~one-time~~ one-time placement in an emergency without a ~~care~~ service plan outlining the rationale for its use. This treatment shall be included in the ~~care~~ service plan for a second placement of a child in the control room.

ITEM 103. Amend subrule 115.7(4) as follows:

115.7(4) Use of control room. The control room shall be used only when a less restrictive alternative to quiet or ~~allow~~ allowing the child to gain control has failed and when it is in the ~~care~~ service plan. The following policies shall apply to the use of the control room:

a. to e. No change.

f. A staff member shall always be ~~within hearing distance of~~ positioned outside of the control room, ~~the child shall be visually checked by the staff at least every 15 minutes, and each check shall be recorded.~~ Visual and auditory observations of the child's behavior and condition shall be recorded at five-minute intervals, and a complete written report shall be documented in the child's file by the end of the staff person's work shift.

g. and h. No change.

ITEM 104. Amend subrule 115.8(3) as follows:

115.8(3) ~~As one unit of treatment program~~ Policies. ~~When a facility utilizes~~ Licensees utilizing a locked cottage as one unit of its treatment program, it shall have and follow written policies for the locked cottage. The policies shall be provided to the child, the child's parents or guardian and, when the child has an attorney, the child's attorney at the time of admission. The policies shall include:

a. and b. No change.

c. ~~Requirement~~ Requirements for documentation in writing of particular behaviors of a particular child that led to the ~~locked cottage~~ placement.

d. to h. No change.

ITEM 105. Amend rule 441—115.9(237) as follows:

441—115.9(237) Mechanical restraint. When a facility uses mechanical restraints as a part of its treatment program, the facility shall have and follow written policies regarding their use. These policies shall be approved by the licenser prior to their use. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff.

115.9(1) and **115.9(2)** No change.

115.9(3) *In transporting children.* Notwithstanding paragraph 115.9(1) "d," mechanical restraint of a child in case of a secure facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record. This report shall document the necessity for the use of restraint. Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts while transporting children and comply with Iowa law.

This rule is intended to implement Iowa Code section 237.4.

ITEM 106. Renumber rule **441—115.10(237)** as **441—115.12(237)**.

ITEM 107. Adopt the following new rule 441—115.10(237):

441—115.10(237) Restraint and control room use debriefing.

115.10(1) *Initial discussion.* Within a short time after the use of the restraint or control room, staff involved in an intervention and the resident must have a face-to-face discussion except when the presence of a particular staff person may jeopardize the well-being of the resident.

a. Other staff and the resident's parent(s) or legal guardian(s) may participate in the discussion when it is deemed appropriate by the facility. The facility must conduct such discussion in a language that is understood by the resident's parent(s) or legal guardian(s).

b. The discussion must provide both the resident and staff the opportunity to discuss the circumstances resulting in the use of the restraint or control room and strategies to be used by the staff, the resident, or others that could prevent the future use of the restraint or control room.

115.10(2) *Staff discussion.* Within 24 hours after the use of the restraint or control room, all staff involved in the intervention, and appropriate supervisory and administrative staff, must conduct a debriefing session that includes, at a minimum, a review and discussion of the intervention including, but not limited to, the following:

(1) The emergency safety situation that required the intervention, including discussion of the precipitating factors that led up to the intervention;

(2) Alternative techniques that might have prevented the use of the restraint or control room;

(3) The procedures, if any, that staff are to implement to prevent any recurrence of the use of the restraint or control room; and

(4) The outcome of the intervention, including any injuries that may have resulted from the use of the restraint or control room.

115.10(3) Documentation. Staff must document in the resident's record that both debriefing sessions took place and must include in that documentation the names of staff who were present for the debriefing, the names of staff who were excused from the debriefing, and any reasons that are applicable.

ITEM 108. Adopt the following new rule 441—115.11:

441—115.11(237) Chemical restraint. Chemical restraint shall not be utilized in a comprehensive residential facility and each comprehensive residential facility shall have written policies that clearly prohibit the use of chemical restraint.

ITEM 109. Amend **441—Chapter 116**, title, as follows:

LICENSING AND REGULATION OF RESIDENTIAL FACILITIES
FOR CHILDREN WITH AN INTELLECTUAL DISABILITY OR BRAIN INJURY

ITEM 110. Amend rule 441—116.1(237) as follows:

441—116.1(237) Applicability. This chapter relates specifically to the licensing and regulation of residential facilities serving children with an intellectual disability or brain injury. Refer to 441—Chapter 112 for basic licensing and regulation of all foster care facilities, 441—Chapter 114 for definitions and minimum standards for all group living foster care facilities, ~~including community care facilities,~~ and 441—Chapter 115 for definitions and standards for comprehensive residential facilities for children. Chapters 112 and 114 apply to community residential facilities for children with an intellectual disability or brain injury and Chapters 112, 114 and 115 apply to comprehensive residential facilities for children with an intellectual disability or brain injury with the exception of the areas discussed specifically in this chapter.

This rule is intended to implement Iowa Code chapter 237.

ITEM 111. Amend rule **441—116.2(237)**, definitions of “Community residential facility for children with an intellectual disability” and “Comprehensive residential facility for children with an intellectual disability,” as follows:

“*Community residential facility for children with an intellectual disability or brain injury*” means a community residential facility as defined in rule 441—114.2(237) which serves children with an intellectual disability as defined in Iowa Code chapter 222 or brain injury as defined in Iowa Code chapter 225C.

“*Comprehensive residential facility for children with an intellectual disability*” means a comprehensive residential facility as defined in rule 441—115.2(237) which serves children with an intellectual disability as defined in Iowa Code chapter 222 or brain injury as defined in Iowa Code chapter 225C.

ITEM 112. Amend rule 441—116.5(237) as follows:

441—116.5(237) Program components. In addition to the requirements of 441—subrule 114.8(3), the facility shall ~~define in writing~~ have and follow a written procedure that defines who is responsible for overseeing personal hygiene of children and maintaining general orderliness of the facility.

This rule is intended to implement Iowa Code section 237.3.

ITEM 113. Amend rule 441—116.6(237) as follows:

441—116.6(237) Restraint. In addition to the provisions of 441—Chapters 114 and 115, a restraint may be used as stated in the child's individual ~~care~~ service plan as approved by the parent or guardian,

caseworker, and facility as long as that facility meets the standards for utilizing that particular type of restraint.

This rule is intended to implement Iowa Code section 237.4.